

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2019-297-G

IN RE:)	
)	
James B. Hamlett,)	
)	RESPONSE TO OPPOSITION TO
Complainant/Petitioner,)	MOTION FOR ADMISSION
v.)	<i>PRO HAC VICE</i>
)	
Piedmont Natural Gas Company, Inc.)	
)	
Defendant/Respondent.)	

Piedmont Natural Gas Company, Inc. (“Piedmont”), by and through undersigned counsel, hereby submits this response to Complainant’s Opposition to Piedmont’s Motion for Admission *Pro Hac Vice* (“Complainant’s Opposition”) in the above-captioned proceeding. For the reasons explained below, the Commission should deny Complainant’s Opposition and grant Ms. McGrath’s motion to appear *pro hac vice* in this matter.

RESPONSE

On November 4, 2019, in accordance with the requirements of Rule 404 of the SCACR, Ms. McGrath filed a Motion for Admission *Pro Hac Vice* and a Verified Application for Admission *Pro Hac Vice* on behalf of Piedmont. Question 10 of the Application asks the applicant to list the South Carolina cases in which the applicant previously filed an application to appear *pro hac vice*. In response to this question, Ms. McGrath listed the three previous matters for which she applied, and was granted, permission to appear *pro hac vice* on behalf of Piedmont in South Carolina. Each of these applications was filed prior to 2019, and are for matters that are no longer active.

Specifically, the matters for which Ms. McGrath has filed for (and received) permission to appear *pro hac vice* in this jurisdiction are as follows:

1. *In re: Piedmont Natural Gas Company, Inc. Annual Review of the Purchased Gas Adjustment and Gas Purchasing Policies*, SC Public Service Commission Docket No. 2015-4-G;
2. *In re: Piedmont Natural Gas Company, Inc. Annual Review of the Purchased Gas Adjustment and Gas Purchasing Policies*, SC Public Service Commission Docket No. 2016-4-G; and
3. *In re: Piedmont Natural Gas Company, Inc. Annual Review of the Purchased Gas Adjustment and Gas Purchasing Policies*, SC Public Service Commission Docket No. 2018-4-G.

While Complainant correctly notes that the application lists the status of these three matters as “Proceeding remains open,” he is incorrect to state that Ms. McGrath is currently providing legal services in these three matters, and that as a result, Rule 404(k) of the SCACR prohibits her from appearing *pro hac vice* in this matter. In fact, each of these matters has been resolved through the issuance of a final order from the Commission (all of which are no longer subject to appeal). The fact that these matters are not closed on the Commission’s website is a not a matter within Ms. McGrath’s control but she is no longer engaged in representing Piedmont in any of these matters.

First, Ms. McGrath has submitted only three applications to be admitted to practice law *pro hac vice* in South Carolina in the past four years and a Commission Directive has been issued in each of the three proceedings. The most recent proceeding, Docket No. 2018-4-G, was resolved by Commission Directive more than a year ago, on July 25, 2018. Thus, contrary to Complainant’s assertions, it cannot be said that Ms. McGrath is “regularly engaged in the practice of law in South Carolina” as she currently is not representing a party in South Carolina in any active matter.

Second, Complainant's focus on Rule 404(d) is misplaced as it is not applicable to this proceeding. Rule 404(k), *Limitations on Provision of Legal Services Pursuant to Rule 5.5(c)(3)*, provides as follows:

A lawyer who is not admitted to practice in South Carolina who seeks to provide legal services pursuant to Rule 5.5(c)(3) in more than three matters in a calendar year shall be presumed to be providing legal services on a regular, not temporary, basis.

Rule 5.5(c)(3) provides as follows:

...

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

...

(3) are in or reasonably *related to a pending or potential arbitration, mediation, or other alternative resolution proceeding* in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission[.] (emphasis added)

As is evident from the plain language, Rule 404(k) sets forth limitations on attorneys who seek to be admitted *pro hac vice* in South Carolina pursuant to Rule 5.5(c)(3), which is for arbitration, mediation or other alternative dispute resolution proceedings. Since this matter is a matter pending before the Commission, and is not a proceeding involving a form of alternative dispute resolution, Rules 404(k) and 5.5(c)(3) are not applicable.

In contrast, Rule 404(f) would serve as a limitation on Ms. McGrath's ability to appear *pro hac vice* in this matter. Rule 404(f) provides as follows:

...

(f) Prohibitions on Admission Pro Hac Vice. An attorney may not appear pro hac vice if the attorney is regularly employed in South Carolina, or is regularly engaged in the practice of law or in substantial business or professional activities in South Carolina, unless the attorney has filed an application for admission under Rule 402, SCACR. Notwithstanding any other provision herein, *an attorney who files more than six applications for admission pro hac vice in a calendar year, including applications for purposes of Rule 404(k), is considered regularly engaged in the practice of law in South Carolina.* (emphasis)

Thus, had Ms. McGrath already filed six applications to be admitted *pro hac vice* in 2019, Complainant would have a legitimate basis to challenge Ms. McGrath's application. However, as previously explained, Ms. McGrath has only sought to appear *pro hac vice* in South Carolina three times in the last four years: first in 2015, second in 2016, and most recently, in 2018. These facts and circumstances make clear that Ms. McGrath is not engaged in the "regular practice of law" in South Carolina, is otherwise qualified for admission to appear in this matter *pro hac vice* before the Commission, and as a result, the Commission should deny Complainant's Opposition and grant Ms. McGrath's application to appear *pro hac vice* in this matter.

Respectfully submitted this the 5th day of November, 2019.

/s/ Jasmine K. Gardner
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 Company, Inc.*

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Complainant/Petitioner,)	CERTIFICATE OF SERVICE
v.)	
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Piedmont Natural Gas Company, Inc.)	
)	
Defendant/Respondent.)	

The undersigned hereby certifies that a copy of the foregoing Response to Opposition to Motion for Admission *Pro Hac Vice* is being served this date upon all parties of record to this docket electronically or by depositing a copy of the same in the U.S. Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 5th day of November, 2019.

/s/ Sloane K. O'Hare
Sloane K. O'Hare